

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2579 – SB 2570

March 29, 2016

SUMMARY OF ORIGINAL BILL: Removes the Department of Revenue's authorization under the Retail Accountability Program to designate which categories of products, for which persons making sales to retailers of such products, are required to provide information reports of such sales to the Department of Revenue (DOR). Authorizes the DOR to require persons selling candy, food, or nonalcoholic beverages, in addition to persons selling beer and tobacco, to retailers of such products to provide information report of such sales to the DOR, only if sales of such candy, food, or nonalcoholic beverages by the wholesaler were at least \$500,000 during the prior calendar year. Establishes that all candy, food, and nonalcoholic beverages may be treated as a single type of product in information reports.

Exempts any wholesaler making sales of candy, food, or nonalcoholic beverages to an affiliate from being required to include such sales in the information report submitted to the DOR. Prohibits the DOR from issuing any assessment, including a notice of proposed assessment, to any retailer based solely on the information report, before first issuing to the retailer an inquiry letter stating the Department's findings and providing an opportunity for the retailer to explain the inconsistencies between its purchases and reported sales.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (015028): Deletes and rewrites the bill such that the only substantive changes are as follows: (1) exempts from food and nonalcoholic beverages the following items: perishable grocery, fresh, refrigerated and frozen meats, and other frozen foods; (2) requires the information report to be filed quarterly, rather than monthly; (3) authorizes wholesalers to submit reports in the format in which such information is maintained by such wholesalers; (4) after July 1, 2019, prohibits the DOR from requiring persons making sales to retailers of other types of tangible personal property, other than beer and tobacco, to submit information reports of such sales; however, such persons may voluntarily submit such information; and (5) requires the DOR to include in any notice of proposed assessment specific language regarding a taxpayer's right to dispute the proposed assessment by filing a timely request for an informal conference.

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FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Decrease State Revenue – \$28,600/FY16-17

\$28,600/FY17-18

\$28,600/FY18-19

\$953,500/FY19-20 and Subsequent Years

Decrease Local Revenue – \$12,700/FY16-17

\$12,700/FY17-18

\$12,700/FY18-19

\$423,600/FY19-20 and Subsequent Years

Assumptions for the bill as amended:

- An effective date of July 1, 2016.
- Under the Retail Accountability Program, pursuant to Tenn. Code Ann. § 67-6-410, the DOR is authorized to require persons making sales to retailers of beer or tobacco products file an information report of such sales.
- Pursuant to Public Chapter 342 of the Public Acts of 2015, the reporting requirements under the Program were expanded to persons making sales to retailers of other categories or types of tangible personal property, as may be designated from time-to-time by the DOR, in addition to beer and tobacco.
- According to the DOR's policies for the Program, as published on the Department's website, beer and tobacco wholesalers that also sell food and beverages are required to include those sales in their report to the Department.
- In addition, non-beer and non-tobacco wholesalers are required to report food and beverage sales to the DOR, if their total sales for resale are \$500,000 or more per year, and these items are sold to retailers that sell beer or tobacco products.
- The expansion of the Program by the Public Chapter 342 of the Public Acts of 2015 was estimated to result in a recurring increase in sales tax revenue of \$2,754,203, of which \$1,907,030 was the state portion and \$847,173 was the local portion. That estimate was based on the absence of the \$500,000 total sales exemption.
- It is estimated that, as a result of such exemption, the expansion under current rules will result in approximately 50 percent of the originally estimated impact, or an increase in total revenue of \$1,377,102 ($\$2,754,203 \times 50\%$).
- The proposed bill as amended will, for FY16-17, FY17-18, and FY18-19, codify the Department's current policy for the Program, as well as exempt the listed items from food and nonalcoholic beverages.
- Based on information provided by the Department's Audit Division, the proposed exemption is estimated to result in a decrease in sales tax revenue of approximately three percent of the estimated Public Chapter 342's impact, or \$41,313 ($\$1,377,102 \times 3\%$), in FY16-17, FY17-18, and FY18-19.
- Of this amount, \$28,605 will be the state portion and \$12,708 will be the local portion.
- The proposed bill as amended will, beginning in FY19-20, effectively prohibits the expansion of the Program. As a result, there will be a recurring decrease in total sales tax

revenue of \$1,377,102, of which \$953,515 will be the state portion and \$423,587 will be the local portion.

- Any sales tax collections resulting from wholesalers voluntarily reporting information on sales of other categories or types of tangible personal property to retailers will be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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